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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,709	01/16/2004	Larry D. Rieke	210_586	6543

7590 02/10/2006

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EXAMINER

PRICE, CARL D

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 02/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/758,709

Applicant(s)

RIEKE ET AL.

Examiner

CARL D. PRICE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 recites the limitation "the bottom" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 2 is vague and indefinite since it is unclear what structural arrangement or orientation of the claimed elements would necessarily constitute a "top vent mode".

Claim 3 recites the limitation "the bottom" in line 5. There is insufficient antecedent basis for this limitation in the claim.

The terms "multipoise", "outwardly", "internal", "top vent mode", "upflow", "right side", "left side", "horizontal left side", "top side" and "outward" in claims 1-14, are relative terms which render the claims indefinite. The terms "multipoise", "outwardly", "internal", "top vent mode", "upflow", "right side", "left side", "horizontal left side", "top side" and "outward" are not defined by the claim and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Regarding claim 3, the word "means" is preceded by the word "trapping" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 3, 4, 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by **US004542734 (Trent et al)**.

US004542734 (Trent et al) a system for draining and trapping vent condensate in a furnace in which a combination drain tee/drain tee trap (16) is connected to an inducer (14) and vented outwardly (15), wherein the drain tee (16,42) further includes an integral drain reservoir (37,38), and means including the sealed joint connections at vent (15) and at (35; 42) for connection to the inducer and an outward vent, and where the drain tee trap is connected to the bottom of the drain tee and includes a two piece sealed trap (14,41) with a water column pressure trapping means (39), the drain tee trap includes an outlet connection (17) adapted for connection to a drain.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 5-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over

US004542734 (Trent et al) in view of US005749355 (Roan et al)

US004542734 (Trent et al) shows and discloses the invention substantially as set forth in the claims with possible exception to the various spatial arrangements and orientations set forth in applicant's claims 5-11.

US005749355 (Roan et al) teaches (see column 2, lines 32-35), from applicant's same furnace and flue gas condensation drain field of endeavor, that it is known to modify and orient condensation drain and collection devices as necessary to accommodate furnaces when oriented in any one spatial orientation or position. Therefore, it would have been obvious to a person having ordinary skill in the art to locate a furnace vent and the drain tee and trap in any one of an "external left side", "external right side", "internal drain tee", "external drain tee trap", "external top vent", "as necessary to accommodate any given furnace installation requirement such as a "downflow installation", "horizontal left installation", "horizontal right installation", etc., in view of the teaching of **US005749355 (Roan et al)**.

Claims 1-14: Rejected under 35 U.S.C. 103(a)

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over **US004479482 (Cherington) in view of DE004134230 (BERG) and US005749355 (Roan et al)**.

US004479482 (Cherington) a system for draining and trapping vent condensate in a furnace in which a combination drain tee/drain tee trap (20) is connected to an inducer (not shown) and vented outwardly of a furnace sidewall, means including the sealed joint connections at vent (12, 36) and at (22, 38) for connection to the inducer and an outward vent (22), and where the drain tee trap (28) is connected to the bottom of the drain tee opening and includes a two piece sealed trap (28, 32; 32, 24a) with a water column pressure trapping means (34), the drain tee trap includes an outlet connection (24) adapted for connection to a drain.

US004479482 (Cherington) shows and discloses the invention substantially as set forth in the claims with possible exception to:

- the drain tee further including an integral drain reservoir; and
- the various spatial arrangements and orientations set forth in applicant's claims 5-11.

DE004134230 (BERG) teaches (see The English language abstract; see Figure 1), form applicant's same furnace and flue gas condensation drain field of endeavor, for the purpose of preventing air from being drawn through the exhaust gas flow including, at the bottom (5) of an exhaust passage tee fitting (3'') of a fuel fire heating system, an integral drain reservoir (at 5, 6, 8) located above a water pressure seal trap (11).

US005749355 (Roan et al) teaches (see column 2, lines 32-35), form applicant's same furnace and flue gas condensation drain field of endeavor, that it is known to modify and orient condensation drain and collection devices as necessary to accommodate furnaces when oriented in any one spatial orientation or position.

In regard to claims 1-14, for the purpose of preventing air from being drawn through the exhaust gas flow including, it would have been obvious to a person having ordinary skill in the art to modify the drain and trap of **US004542734 (Trent et al)** to include, at the bottom of the exhaust passage tee fitting of a fuel fire heating system, an integral drain reservoir (at 5, 6, 8) located above a water pressure seal trap (11). Also, in view of the teaching of **US005749355**

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(Roan et al), it would have been obvious to a person having ordinary skill in the art to locate a furnace vent and the drain tee and trap in any one of an “external left side”, “external right side”, “internal drain tee”, “external drain tee trap”, “external top vent”, etc. as necessary to accommodate any given furnace installation requirement, such as a “downflow installation”, “horizontal left installation”, “horizontal right installation”, etc.

Conclusion


See the attached USPTO form 892 for prior art made of record and not relied upon which is considered pertinent to applicant's disclosure.

USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CARL D. PRICE
Primary Examiner
Art Unit 3749